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treat the relation as dependent on contract. Thus on page 47 we read: "At common law a married woman . . . is incapable of entering into a binding contract . . . and she is incapable of appointing an agent or attorney. Except, therefore, in so far as her common law disabilities have been removed by statute, all contracts of agency or appointments of an attorney by a married woman, and all contracts or acts which she undertakes to make or do through the intervention of an agent or attorney are absolutely void." Later, on page 523, is found a discussion of *Freeman's Appeal* (68 Conn. 533), a case in which the court held the guaranty of a married woman delivered in Illinois by her agent to be void, on the ground that by the law of her domicile, Connecticut, where the appointment of an agent was made, she had no capacity to contract, and therefore no power to appoint an agent, and consequently could not be bound by the act in Illinois, whatever might be the law of that state as to her capacity. Our authors remark ". . . this case was really not a construction of the agent's authority, but a construction of the power possessed by the married woman under the laws of Connecticut"; and they quote the language of the court: "The underlying question is, 'Was it, as to her, ever delivered at all? It was not so delivered unless delivered by her authority, and by the laws of Connecticut, where she assumed to give such authority, she could not give it.'" It is submitted that the case may be more readily explained as based upon a misconception of the principles of agency, and opposed to the authority of *Baum v. Birchall* (150 Pa. St. 164), not cited by the authors.

Another instance of failure to explain a troublesome principle as clearly as might be wished, is found in the discussion of the nature and extent of the agent's authority. A principal may be liable to a third person for acts of his agent done contrary to his wishes or even his express directions in two cases: first, if he has in some form represented to the third person that the agent has authority to do the acts, and the third person has changed his position in reliance upon those representations, the principal is estopped, upon grounds not in any way peculiar to the subject of Agency, to deny the authority; second, if the principal has given the agent authority to conduct certain matters, but has without notice to the third party given private instructions reducing the agent's discretion below that ordinarily exercised by agents engaged in similar enterprises, the third person is not bound by such instructions, even though on account of lack of representations made directly from the principal to the third party the elements of estoppel do not exist. Whether an estoppel is made out is a matter of no great difficulty; but the determination of the line at which instructions of the principal cease to be effective limitations upon authority and become unimportant so far as the rights of third parties intervene, is probably the most perplexing problem in the subject of Agency. The authors have so confused this topic of "apparent authority" with estoppel in chapter viii. on the "Nature and Extent of Agent's Authority" as to impair seriously the value of the book as a trustworthy statement of the law. It is to be hoped that in a second edition, which the work on its merits should command, this chapter may be rewritten more clearly.

H. LE B. S.

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#### THE PRINCIPLES OF THE ADMINISTRATIVE LAW OF THE UNITED STATES.

By Frank J. Goodnow. New York: G. P. Putnam's Sons. 1905. pp. xxvii, 480.

A previous work by Dr. Goodnow, under the title of *Comparative Administrative Law*, received such praise from competent critics that the present volume was looked forward to with keen expectation. Nor will critical scholars be disappointed with its contents. It is conceived in a thoroughly scientific spirit, and the subject has been worked out with a clearness of expression, an orderliness of arrangement, and a depth of knowledge that will rank the work as a valuable contribution to political science. The magnitude of the task undertaken by the author may be appreciated when it is said that over six hundred

decisions of the courts are cited, and the administrative law not only of the federal government, but of practically all the states of the Union, is summarized. Yet the very comprehensiveness which is one of the work's chief merits, contributes to make parts of it dry and technical, notwithstanding the author's efforts to the contrary. Concrete illustrations of the principles expounded are almost totally lacking. If these could have been inserted, the book would have been longer, but would have seemed shorter. It should be added, however, that the author in his preface promises an additional volume, which will be wholly devoted to the cases or concrete instances.

Mr. A. V. Dicey, the English jurist, having denied the possibility of the existence of administrative law, Professor Goodnow gives in his first chapter a forceful essay on the *raison d'être* of the title he employs. There follows a definition of administrative law as "that part of the law which fixes the organization, and determines the competence of the authorities which execute the law, and indicates to the individual remedies for the violation of his rights." Having thus fixed the scope of his work, the author takes up the federal, state, and local administration and discusses it with reference to the decisions of the courts. The book is specially luminous in the explanation of the actual and theoretical relations to one another of the executive, the legislature, and the judiciary; in the account of the increasing power of the President; and in the exposition of the relations of municipal corporations to the state governments. The discussion of local government brings out clearly the amazing variety of administrative laws, and serves to demonstrate that this broad land has been a fruitful field for political experiment such as the old world could never furnish.

Dr. Goodnow has wisely adopted the historical method wherever it was possible. He explains, for instance, the status of the English borough from mediæval times to the colonial period, thus accounting for the form it assumed in the United States. Again, he points out the interesting fact that while Montesquieu laid down his famous trinity as all sufficient for a state, the American states have added a fourth division, — the administrative department. The passages criticising the tenure of office act (p. 115) and demonstrating the un wisdom of presenting a long list of candidates to the confusion of the voter, serve to lighten the severely technical discussion.

In two instances, at least, the desire for brevity seems to have excluded explanations which the general reader would properly demand. Thus it is stated that "in 1867 Congress deliberately reversed its decision, and by the tenure of office acts of 1867-9 decided . . . that Congress was the body to decide who possessed the power of removal (p. 76). This so-called deliberate change of front is partly explained by a fact which the author omits, *i. e.*, that Congress was engaged at the beginning of this period in a fierce conflict with the President and had "an axe to grind." So on page 390, where it is stated that "by the original constitution a state might be sued by a citizen of any other state," the proper reference should have been given to the case of *Chisholm v. Georgia*; and the reader should have been told that the decision was rendered by a divided court, and that it was opposed to a wide-spread opinion of jurists at the time the Constitution was ratified. In the light of these facts the adoption of the eleventh amendment is more easily understood.

It seems to be a positive error to state that the last case of impeachment in England was that of Warren Hastings (p. 459). Lord Melville was impeached as late as 1806.

With the book of cases to follow, the present work should prove as useful a text-book to the practical lawyer as to the student of political science. There is a full table of cases cited, a list of authorities, and an excellent index.

J. R. F.